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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,393	10/26/2001	Joel S. Hochman	Athena1	9804
30996	7590	02/12/2008	EXAMINER	
ROBERT W. BECKER & ASSOCIATES 707 HIGHWAY 333 SUITE B TIJERAS, NM 87059-7507			HOEKSTRA, JEFFREY GERBEN	
			ART UNIT	PAPER NUMBER
			3736	
			MAIL DATE	DELIVERY MODE
			02/12/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

<b>Application No.</b> 10/007,393	<b>Applicant(s)</b> HOCHMAN ET AL.	
<b>Examiner</b> JEFFREY G. HOEKSTRA	<b>Art Unit</b> 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 21 January 2008.
- 2a)  This action is **FINAL**.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1, 12, 13 and 20-72 is/are pending in the application.  
4a) Of the above claim(s) 1, 12, 13, 20-31, 38-40, 44, 45 and 48-72 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 32-37, 41-43, 46 and 47 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 08 October 2007 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All   b)  Some \*   c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_.

## DETAILED ACTION

### *Notice of Amendment*

1. In response to the amendment filed on 01/21/2008, withdrawn claim(s) 25, 30, 40, 51, 52, and 64-72 is/are acknowledged. The following new grounds of rejection are set forth:

### *Election/Restrictions*

2. Applicant's election of Group 1, drawn to claims 1, 12, 13, 20-29, and 31-63, and Species B, drawn to a "stimulating embodiment", in the reply filed on 01/21/2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

3. Claims 1, 12, 13, 20-31, 38-40, 44, 45 and 48-72 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 01/21/2008.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### *Drawings*

5. The drawings were received on 10/08/2007. These drawings are acceptable.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 32-37, 41-43, 46 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Hochman (US 4,515,167).

8. For claim 32, Hochman discloses a system for stimulating pelvic muscles and nerves in a human vagina (Abstract), comprising:

- a portable probe unit (10), comprising:
  - a substantially cylindrical body (as best seen in Figure 1);
  - a substantially smooth (as best seen in Figure 1) and substantially sealed outer surface (column 3 lines 10-15, column 4 lines 44-56, and column 6 lines 6-22) with a rounded end (as best seen in Figure 1);
  - dimensioning to permit comfortable and repeated insertion into, removal from, and containment entirely within the human vagina (Abstract, column 1 lines 37-63, and column 5 lines 55-66) (as best seen in Figure 1);
  - a substantially annular means (11 or 12) substantially flush with the outer surface of the body of the probe unit (as best seen in Figure 1), wherein said annular means is adapted to deliver electrical pulses (column 5 line 47 – column 6 line 22);

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- a programmable microprocessor (20) (column 1 lines 63-67, and column 2 lines 18-27) (as best seen in Figure 6);
  - a memory (column 1 lines 64-68, column 2 lines 18-27, column 3 lines 4-22, and column 7 lines 28-49);
  - a battery (column 2 line 58 – column 3 line 3); and
  - a two-way communication means (21) with antenna (22) that transmits and receives signals to and from a controller unit (33) wirelessly and is capable of communicating in real time (column 3 lines 26-63, column 4 line 66 – column 5 line 27, column 6 lines 57-68, and column 8 line 63 – column 9 line 21) (as best seen in Figure 5); and
- the controller unit (33) comprising two-way communication means adapted to both receive signals from said probe unit and transmit signals to said probe unit (column 3 lines 26-63, column 4 line 66 – column 5 line 27, column 6 lines 57-68, and column 8 line 63 – column 9 line 21) wirelessly and is capable of communicating in real time (as best seen in Figures 4-6), wherein said signals comprise instructions to start, stop, and/or alter the activity of the annular means of the probe unit (column 3 lines 26-63, column 4 line 66 – column 5 line 27, column 6 lines 57-68, and column 8 line 63 – column 9 line 21) (as best seen in Figure 5).
9. For claim 33, Hochman discloses the system, wherein said probe unit further comprises a means for transmitting signals (column 3 lines 26-63, column 4 line 66 –

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column 5 line 27, column 6 lines 57-68, and column 8 line 63 – column 9 line 21) to an external device (27) in real time (as best seen in Figures 4-6).

10. For claim 34, Hochman discloses the system, wherein said controller unit is capable of being provided with memory (column 3 lines 26-63, column 4 line 66 – column 5 line 27, column 6 lines 57-68, and column 8 line 63 – column 9 line 21).

11. For claim 35, Hochman discloses the system, wherein said probe unit is adapted to be programmed to start and for stop delivery of electrical pulses after a predetermined period of time (column 1 lines 37-56, column 2 lines 18-27, and column 7 lines 1-27) (as best seen in Figure 2).

12. For claim 36, Hochman discloses the system, wherein said probe unit is adapted to be programmed to deliver cycles of alternating electrical pulses and rest periods (column 1 lines 37-56, column 2 lines 18-27, and column 7 lines 1-27) (as best seen in Figure 2).

13. For claim 37, Hochman discloses the system, wherein said probe unit is adapted to be programmed to deliver electrical pulses of varying strengths (column 1 lines 37-56, column 2 lines 18-27, and column 7 lines 1-27) (as best seen in Figure 2).

14. For claim 41, Hochman discloses the system, said probe unit further comprising means for facilitating removal (14) of the probe from a mammal's vagina (as best seen in Figure 1) (column 5 lines 57-62).

15. For claim 42, Hochman discloses the system, wherein said probe unit is less than one inch in diameter and less than four inches in length (column 2 lines 65-67 and column 5 lines 57-62).

16. For claim 43, Hochman discloses the system, wherein said probe unit and said controller unit are capable of being held together and wherein separation of said probe unit and said controller unit is capable of causing said probe unit to turn on.

17. For claim 46, Hochman discloses the system, wherein said controller unit is capable of being to be hand-held.

18. For claim 47, Hochman discloses the system, wherein said controller unit is adapted to permit manual operation and control of said probe unit column 3 lines 26-63, column 4 line 66 – column 5 line 27, column 6 lines 57-68, and column 8 line 63 – column 9 line 21).

### ***Response to Arguments***

19. Applicant's arguments with respect to claims 32-37, 41-43, 46 and 47 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY G. HOEKSTRA whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey G Hoekstra/  
Examiner, Art Unit 3736

/Brian Szmaj/  
Primary Examiner, Art Unit 3736